

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 PECOS DIVISION

4 UNITED STATES OF AMERICA) Docket No. PE 20-CR-388(1) DC
5)
6 vs.) Pecos, Texas
7)
8 THOMAS SCOTT PERKINS) September 24, 2020

9 TRANSCRIPT OF DETENTION HEARING
10 BEFORE THE HONORABLE DAVID B. FANNIN

11 APPEARANCES:

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I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>Witnesses:</u>				
David Ferg	6	14		
John Perkins, Sr.	22	29	33	

E X H I B I T S

	<u>Offered</u>	<u>Admitted</u>
<u>Government's</u>		
(None)		
<u>Defendant's</u>		
(None)		

1 (Proceedings commence at 10:24 a.m.)

2 THE CLERK: Court calls: PE-20-CR-388, The
3 United States of America vs. Thomas Scott Perkins.

4 MR. CANNIZZARO: Good morning, your Honor.
5 John Cannizzaro on behalf of the government.

6 THE COURT: Good morning.

7 MR. O'NEAL: Shane O'Neal on behalf of Mr.
8 Perkins.

9 Your Honor, I believe we're here on a detention
10 hearing.

11 THE COURT: Mr. O'Neal --

12 MR. O'NEAL: Yes.

13 THE COURT: -- let me just make -- put a few
14 things on the record.

15 MR. O'NEAL: Yes, sir.

16 THE COURT: Mr. Perkins was indicted by a federal
17 grand jury on September the 10th, 2020. He was
18 subsequently picked up -- and this was a sealed
19 indictment. He was subsequently picked up on, looks to me
20 like, September the -- maybe September the 15th. And
21 then, he had a hearing -- a detention hearing before Judge
22 Parker in Abilene on September the 16th, and Judge Parker
23 made conditions of bond in this case. And Mr. Perkins and
24 his father voluntarily came down to this court to take
25 care of this matter. This was on this past Tuesday,

1 September the 22nd. And because of information, that I
2 received from Pretrial Services in this case, I ordered
3 the re-detention of Mr. Perkins, not for any violation of
4 his bond.

5 And, Mr. O'Neal, would you like to add anything
6 to that?

7 MR. O'NEAL: Yes, your Honor. I think the Court
8 read my mind and I appreciate the summary.

9 I agree with the Court's recitation of the facts.
10 I think that an order setting conditions has been entered
11 in this case. Mr. Perkins complied with those conditions.
12 As the Court noted, the Court took him into custody not
13 violating him. Apparently, I think the government's --
14 the motion that the government must have made on September
15 22nd was improper. They either should have appealed Judge
16 Parker's orders setting release to a district court judge,
17 assuming they preserve that issue by filing a motion to
18 detain in the lower court, or move to revoke the
19 conditions if they believe that he didn't meet them.

20 I think that the order setting conditions should
21 be reinstated.

22 THE COURT: And then, your appeal would be to
23 Judge Counts if you wish to do that. Or we can have -- or
24 we can do a detention hearing in this court and -- or a
25 re-detention hearing, I suppose, in this court. Make your

1 choice.

2 MR. O'NEAL: So I take it, the Court's denying my
3 request to reinstate the -- set the conditions of release.

4 THE COURT: Right.

5 MR. O'NEAL: We'll go forward today. And if we
6 need to appeal, we'll do that.

7 THE COURT: Okay. Thank you.

8 And, Mr. Cannizzaro, this is a detention hearing.
9 Mr. Perkins has been indicted.

10 Let me ask you this, Mr. Cannizzaro: Is there
11 any reason why this case is presently sealed?

12 MR. CANNIZZARO: Yes, your Honor. And I was
13 going to ask you about that because my understanding is
14 that when we did the grand jury, there was a separate
15 motion that I filed that said as to this particular
16 defendant, once he was arrested, that the case were to --
17 the case was to be unsealed. And that should have been
18 filed with the indictment. So I'm not sure if the clerk
19 has a copy of that motion and there should be an attached
20 order with that, as well.

21 THE COURT: I think if the clerk had that motion,
22 they would have unsealed this. What I would ask you to
23 do, Mr. Cannizzaro, is to file a motion to unseal this
24 case and so we can proceed with that without closing the
25 courtroom every time we talk about it.

1 MR. CANNIZZARO: Okay. I will file that motion,
2 Judge.

3 THE COURT: Thank you. You may call your
4 witness, if you'd like.

5 MR. CANNIZZARO: Yes, your Honor.

6 At this time, the government calls Agent David
7 Ferg to the stand.

8 THE CLERK: Mr. Ferg, if you could raise your
9 right hand.

10 Do you swear to tell the truth, the whole truth,
11 and nothing but the truth, so help you God?

12 THE WITNESS: Yes, I do.

13 THE COURT: You may proceed.

14 DAVID FERG, called by the Government, duly sworn.

15 DIRECT EXAMINATION

16 BY MR. CANNIZZARO:

17 Q. Thank you, Judge.

18 Good morning, Agent Ferg. Can you please
19 introduce yourself to the Court and can you please spell
20 your name for the record?

21 A. Sure. My name is David Ferg. And my last name is
22 F-E-R-G.

23 Q. Thank you, Agent Ferg.

24 And can you tell us where you concurrently work
25 at?

1 A. I'm a special agent with Homeland Security
2 Investigations in Alpine, Texas.

3 Q. Okay. And how long have you been working with
4 Homeland Security Investigations in Alpine, Texas port?

5 A. In Alpine, approximately five years.

6 Q. Okay. And do you have prior law enforcement
7 experience?

8 A. I was also with HSI in Deming, New Mexico for
9 approximately four years before.

10 Q. Gotcha. And are you the case agent in this
11 particular case against Mr. Perkins?

12 A. Yes, I am.

13 Q. Okay. And do you see on one of your screens, Mr.
14 Perkins present, I guess, on your screen?

15 A. I did see him when he walked in. I do not see him
16 now.

17 Q. Okay. Can you tell the Court briefly, how did you
18 first become aware of this case involving the defendant?

19 A. Yes, sir.

20 This case originated in September 2019. When a
21 different HSI agent in Brownsville, Texas, assigned to
22 child exploitation federal crime passports, he was
23 conducting online investigations of BitTorrent, which is a
24 peer-to-peer network used to share files, and he
25 identified an IP itself address that was possibly sharing

1 child exploitation materials. He was able to pull
2 downloads from that IP address, and subsequently, the
3 files were transferred to us when it was determined that
4 the IP address was located in Fort Stockton, which is
5 within our area of the Western District of Texas.

6 Q. Okay. And then, what did you do at that point when
7 you knew the IP address coming from your -- our area in
8 the Western District?

9 A. When I first viewed the files that were provided to
10 us, I did confirm that they were child pornography. And
11 then, we did a subpoena in order to determine the
12 subscriber information for that IP address.

13 Q. Okay. And what was the subscriber information that
14 you learned for that IP address?

15 A. It came back to an individual named John Perkins at
16 that address, 404 Seal Street in Fort Stockton.

17 Q. Okay. And then, what did you do at that point when
18 you learned about the address?

19 A. From there, I began researching who Perkins was, who
20 his family was, conducting surveillance on the location to
21 try to confirm vehicles and relevant information.

22 Q. Okay. And at some point, were you able to confirm
23 the address and actually go to that address? How did that
24 process work?

25 A. Yes, sir. After multiple times of surveillance, we

1 eventually obtained a search warrant for the location.

2 Q. Okay. And did you eventually serve that search
3 warrant?

4 A. Yes, we did.

5 Q. Okay. And what exactly did you get out of that
6 search warrant? What was the nature of the items that you
7 seized pursuant to that search warrant?

8 A. Personally, I was involved in interviews at the time,
9 but our agent, an assisting agent, he would fix the items,
10 many of which were electronics. Desktop computers, laptop
11 computers, video game systems, thumb drive.

12 Q. Okay. And prior to that, I know just without
13 understanding the timeline -- I guess, before the search
14 warrant was served, you actually talked to all the people
15 that were living in the residence. Is that true?

16 A. It was basically simultaneous with the search
17 warrant. Yes, sir.

18 Q. Okay. Can you tell the judge who exactly did you
19 speak with?

20 A. Yes, sir. First we spoke with John Perkins, the
21 father of -- head of the household. We spoke with him on
22 the morning before the search warrant was executed at his
23 place of work.

24 Q. Okay. And what did you learn from speaking with him?

25 A. In speaking with him, he confirmed much of the

1 information we had as far as internet provider, who lived
2 at the house, and he stated that he did have one adult
3 son, Thomas Perkins, stated that he was the person in the
4 house most involved with using the computers, that he was
5 only one that had access to the passwords or their Wi-Fi
6 network. And he also confirmed that previously, there had
7 been some indications that his son, Thomas, had been
8 involved with child pornography materials.

9 Q. Okay. And did you also speak with Mrs. Perkins?

10 A. Yes, sir. Mr. Perkins called his wife and asked her
11 to come join him at his office. And so, when she arrived,
12 we spoke with both her and John at the same time just to
13 explain the situation about was occurring.

14 Q. Okay. And what did you learn from speaking with her?

15 A. Basically the same thing as stated that they were
16 kind of scared of him, that he sort of ruled the house,
17 that he had many, many electronic items, basically taking
18 over the house but was living in the living room, and she
19 stated, again, multiple years previously, Thomas had
20 specifically told her that he had downloaded child
21 pornography materials.

22 Q. Okay. Now, going back to the search when you -- the
23 items that were seized, has there been any forensic
24 searches done to those items that were seized inside of
25 the Perkins household?

1 A. At least on some of the items, yes, sir.

2 Q. Okay. And can you tell the Judge briefly,
3 specifically dealing with the child exploitation, what was
4 found on those computers?

5 A. Yes, sir. From my understanding from the computer
6 forensics agent in El Paso who's working on this, so far,
7 he searched about ten of the items. I believe he found
8 child exploitation materials on seven or eight of the
9 items. So far, he's calculated and found approximately
10 100,000 possible child exploitation files, either pictures
11 or videos. He stated some of those were probably
12 duplicates, but he believed approximately 69,000 were
13 unique.

14 Q. Okay. And did you have an opportunity to actually
15 speak with the defendant about the images and videos found
16 on those devices?

17 A. Not anything about those -- the images found on those
18 devices, but we did speak to him about what files that had
19 been originally downloaded.

20 Q. Okay. And how did that happen? Did you -- was he
21 under arrest? Did you have to read him his rights? Was
22 it a consensual encounter? Can you tell the Court about
23 that, please?

24 A. Yes, sir. After we had finished speaking with his
25 parents while the other agents were executing the search

1 warrant, they transported Mr. Perkins to the DPS office in
2 Fort Stockton, and that's where we interviewed him. We
3 assured him that he was not under arrest. Told him
4 multiple times that hat he was not being charged. But we
5 did read him his Miranda rights, anyway.

6 THE DEFENDANT: I thought (indiscernible).

7 Q. (MR. CANNIZZARO) Okay. And even -- did he waive his
8 Miranda rights to speak with you?

9 A. Yes, he did.

10 Q. Okay.

11 THE DEFENDANT: I don't remember that. I didn't
12 waive my Miranda rights.

13 THE COURT: Mr. Perkins, you'll have a chance to
14 speak if your lawyer calls you. This is the witness' turn
15 to speak right now. So please don't interrupt him.

16 You may proceed.

17 MR. CANNIZZARO: Thank you, your Honor.

18 Q. (BY MR. CANNIZZARO) Agent Ferg, can you tell us what,
19 did you learn from speaking with the defendant at that
20 point?

21 A. In speaking with Mr. Perkins, he confirmed that he
22 had previously used BitTorrent software. He stated that
23 he liked to make very broad searches, sometimes just as
24 broad as picture or image. But he did confirm that he had
25 downloaded child pornography material. He expressed

1 knowledge or at least that he had done research as far as
2 what was legal and what was not legal to possess.

3 THE DEFENDANT: (Indiscernible).

4 A. But he did tell us that frequently, things that he
5 had downloaded, he knew were illegal and he sent them
6 (indiscernible) to read but that did not (indiscernible).

7 Q. (BY MR. CANNIZZARO) And specifically, one thing I
8 want to make sure that the Court is aware of, were there
9 certain terms that he used to search knowing that he would
10 actually download child pornography?

11 A. When we talked to him about specific search terms, he
12 remained very vague and didn't want to provide any of the
13 exact terms.

14 Q. Okay. There was some mention of PTHC in either the
15 searches or what you confronted him about, I could be
16 mistaken, but I thought that was something that was
17 brought up in your interview.

18 THE DEFENDANT: (Indiscernible).

19 A. I didn't ask him about the PTHC. I believe he had
20 said he knew what that frequently stood for, but he did
21 not specifically say what that term was.

22 Q. (BY MR. CANNIZZARO) And what does that term actually
23 mean?

24 A. Frequently stands for preteen hardcore, which is a --
25 as you said, it's a common search term to find child

1 pornography material.

2 Q. Okay. And did he confirm to you that he actually was
3 -- the nature of BitTorrent allowed other people to have
4 access to these files that he, in fact, would be
5 distributing these same files that he was downloading?

6 A. When we explained to him how -- or when me asked him
7 to explain to us how BitTorrent worked, he did state that
8 he understood that the things that he downloaded were
9 frequently available for other people to download from
10 him, as well.

11 Q. Okay. So he acknowledged that, in fact, he was
12 distributing what he was downloading.

13 A. Yes, sir. He told us that he regretted leaving that
14 option on to allow other people to download.

15 Q. Okay. At this point, I don't have any further
16 questions for Agent Ferg. Thank you.

17 THE COURT: Mr. O'Neal. And you may stay at
18 counsel table if you'd like.

19 MR. O'NEAL: I'll take a podium so Mr. Perkins
20 can see me.

21 THE COURT: Okay.

22 CROSS-EXAMINATION

23 BY MR. O'NEAL:

24 Q. Agent Ferg, the videos that you identified as
25 suspected child exploitation material, where were those

1 videos found?

2 A. I'm sorry, sir, I can't really hear you.

3 Q. Can you hear me now?

4 A. That's a little bit better.

5 Q. Here, let me -- how's this?

6 A. That's much better.

7 Q. Okay. The videos that you found that you suspected
8 were child exploitation material, where did you find those
9 files?

10 A. They were provided to us by this other HSI agent that
11 he had downloaded from a specific IP address.

12 Q. So essentially the files that you have personally
13 reviewed are files that you noticed were being down --
14 that another HSI agent noticed were being downloaded by
15 this IP address; is that right?

16 A. He had noticed that they were potentially being
17 available, and so, he used software in order to download
18 what that IP address had made available to share.

19 Q. When you say potentially available, that means that
20 the BitTorrent software coming from this IP address was
21 sharing the files; is that right?

22 A. To my understanding, yes, sir. I know that it's not
23 always possible to download what a BitTorrent user has
24 available. It depends on whether the computers can
25 connect.

1 Q. Okay. So the files that you've reviewed and
2 identified as child exploitation material, there's at
3 least some question as to whether the IP address in
4 question -- that we're talking about that was owned by the
5 Perkins was in possession of those files and sharing them?

6 A. No, sir.

7 Q. There's no --

8 A. My understanding, the forensics agent was able to
9 specifically ensure that he was only receiving files from
10 a -- the specific IP address that was targeted there.
11 He's not receiving files or file fragments from any other
12 IP address.

13 Q. Okay. So you're sure that it was coming from this IP
14 address; is that right?

15 A. Yes, sir.

16 Q. Okay. But you haven't -- have you been able to
17 identify those videos as being on the electronic devices
18 that Agent Yanez has been reviewing?

19 A. I have asked the forensics agent to check that. He
20 wasn't able to confirm -- I'm not sure the number, but he
21 did confirm that at least some of the ones that were
22 downloaded -- that the forensics agent in Brownsville had
23 downloaded were also found on some of the items that he
24 was searching, seized from Mr. Perkins.

25 Q. Okay. Have any of the files that were seized or

1 identified to the IP address, have their hash values been
2 examined?

3 A. I'm not sure about that, sir.

4 Q. You're aware of what I'm talking about, right?

5 A. Yes, sir.

6 Q. Every file has -- that anyone has on a computer has a
7 long string of letters and numbers that is referred to as
8 a hash value, right?

9 A. That is my understanding. Yes.

10 Q. And the National Center For Child Exploitation, I'm
11 not -- I'm messing up the acronym, but it's NCMEC
12 maintains that a database of hash values that have been
13 identified as child exploitation materials; is that right?

14 A. Yes, sir. That's correct.

15 Q. Okay. So here, we're just going off of what you and
16 Agent Yanez believe the videos contain. None of the
17 videos or pictures contain -- none of the files have been
18 specifically linked to material that has been identified
19 as child exploitation material by NCMEC; is that right?

20 A. Actually, sir, now that I recall, when I was
21 reviewing the files that had been provided to me from the
22 agent in Brownsville, I did run the hash values, and
23 several of them were recognized that had cataloged as
24 known child exploitation.

25 Q. Okay. Now, the interview that you conducted of Mr.

1 Perkins, was that in January?

2 A. Yes, sir. That's correct.

3 Q. And that was January of this year?

4 A. Yes, sir.

5 Q. Okay. And he wasn't indicted and arrested until
6 September, right?

7 A. That is correct.

8 Q. Did y'all monitor him in any way in the intervening
9 nine months?

10 A. Other than occasionally driving by his house. Also,
11 the local police who were involved with the search warrant
12 knew what had happened, but no. No one was actively
13 monitoring.

14 Q. Okay. Were there -- would you have been aware if he
15 had tried to obtain a computer, or log onto the internet,
16 or anything like that?

17 A. No. I would not have.

18 Q. Do you have any information indicating that he has?

19 A. I have not received any new information indicating
20 that he has one way or another.

21 Q. Okay. Have you any information that he has in those
22 intervening nine months viewed child exploitation material
23 or possessed it?

24 A. I have not received any information regarding that.

25 Q. Okay. Now, you mentioned that there were -- when you

1 interviewed Mr. John Perkins, there were previous
2 indications that his son had been involved in child
3 pornography. Those were letters from an internet service
4 provider; is that correct?

5 A. No, sir. This was separate instance where Mr.
6 Perkins stated that approximately ten years ago, he had
7 found a picture or pictures that Thomas had printed up at
8 home.

9 Q. Okay. And Thomas Perkins would have been what, 18,
10 17 at the time?

11 A. Yes, sir, around there.

12 Q. Okay. Were there any other indications that he had
13 been involved in child pornography?

14 A. Only statements also from his mother stating
15 approximately that same timeframe, maybe ten years prior,
16 where she said that Thomas had just specifically told her,
17 kind of out of the blue, that he was downloading child
18 pornography.

19 THE DEFENDANT: Didn't say anything.

20 MR. O'NEAL: Mr. Perkins, if you -- please,
21 please, just -- you and I are going to talk about this
22 later today. And please don't provide anymore comments
23 because this is -- proceeding is being recorded and I want
24 to make sure that whatever -- what you have to say is
25 presented in the appropriate light to the Court.

1 Q. (BY MR. O'NEAL) Agent Ferg, you wrote in -- I want to
2 clarify a couple of things in your reports.

3 When you were interviewing Mr. Thomas Perkins,
4 you discussed an incident where he had been horse playing
5 with a juvenile at a church event; is that right?

6 A. (Indiscernible) interview Mr. Perkins and that is
7 (indiscernible).

8 Q. I'm sorry. Could you restate your answer there,
9 Agent Ferg? I didn't quite get that.

10 A. Sure. That incident was not discussed during the
11 interview with Mr. Perkins. Following our interview, he
12 consented to conduct an interview with a DPS CID
13 polygrapher, and it was during that interview that
14 incident was discussed.

15 Q. Okay. And during that interview, Mr. Perkins
16 explicitly denied that the conduct was sexual in nature;
17 is that right?

18 A. That's my understanding, sir.

19 Q. Okay. And then, you also discussed with him that
20 what might happen if he encountered a 12 or a 13-year-old
21 girl; is that right?

22 A. That also occurred with the polygrapher's interview.

23 Q. Okay. And in that interview with the polygrapher,
24 what he specifically said was that he would have trouble
25 stopping himself if the child initiated sexual contact; is

1 that right?

2 A. From what I had heard, I listened to it again
3 yesterday, she posed a hypothetical situation that if she
4 was a 12 or 13-year-old girl and approached Mr. Perkins
5 wanting to have sex, he stated that if given the
6 opportunity, privacy, that he would accommodate.

7 Q. Okay. Now, you mentioned that on these -- on the
8 electronic devices and the computers that the parents,
9 John and Elizabeth Perkins, said that Thomas Perkins is
10 the primary one who uses them; is that right?

11 A. For the majority of the devices, yes.

12 Q. Okay. And you said that Thomas is the one who has
13 the password to the Wi-Fi; is that correct?

14 A. That is what his parents told us. Yes.

15 Q. Okay. But they didn't deny that they also have
16 access to the wireless internet, right?

17 A. That is correct.

18 Q. And have these devices that have been searched, have
19 they been password-protected?

20 A. I would have to ask the forensics agent on that, but
21 I believe many of them have been.

22 Q. Okay. And did you ask John or Elizabeth Perkins
23 during the interviews whether they had passwords to the
24 device -- whether they had the ability to access the
25 devices that y'all were seizing from the house?

1 A. We did ask them generally if they had access to
2 Thomas' (indiscernible).

3 Q. What did they say?

4 A. They stated as far as they knew, they were
5 password-protected and that they did not know the
6 passwords and did not attempt to use them.

7 Q. Okay. You said -- you gave a frequent meaning of the
8 search term "PTHC." I'm just curious about your words.
9 Is there any other meaning?

10 A. I'm not aware. That's the only phrase -- that's the
11 only explanation I've heard.

12 Q. Okay.

13 A. Based on my training and experience.

14 Q. Pass the witness.

15 THE COURT: Mr. Cannizzaro.

16 MR. CANNIZZARO: Your Honor, we do not have any
17 other questions for this witness nor do we have any other
18 evidence or witnesses, and we rest and close. Thank you.

19 THE COURT: Thank you, Agent.

20 Mr. O'Neal.

21 MR. O'NEAL: Defense calls John Perkins.

22 THE CLERK: Do you swear to tell the truth, the
23 whole truth, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE COURT: Please have a seat and speak into the

1 microphone.

2 JOHN PERKINS, SR., called by the Defendant, duly sworn.

3 DIRECT EXAMINATION

4 BY MR. O'NEAL:

5 Q. Mr. Perkins, could you state your name and spell your
6 last name, please?

7 A. John Perkins, P-E-R-K-I-N-S.

8 Q. And how do you know Thomas Perkins?

9 A. He's my son.

10 Q. Okay. I want to talk to you a little bit about
11 yourself first. Where do you live, sir?

12 A. I live at 404 South Seals in Fort Stockton.

13 Q. And who lives with you there?

14 A. My wife, Elizabeth, lives with me.

15 Q. Okay. And up until January of this year, your son,
16 Thomas, lived with you, as well, right?

17 A. That is correct.

18 Q. Are you employed, sir?

19 A. Yes.

20 Q. Where do you work?

21 A. I work for the USDA in Fort Stockton.

22 Q. What do you do for them?

23 A. I'm the area director of rural development.

24 Q. What does that involve more or less?

25 A. It involves making loans and grants to families,

1 businesses, communities.

2 Q. Your son, Thomas, did he live with you continuously
3 up -- from when he was born up until January of this year?

4 A. Yes.

5 Q. Where did he go to school?

6 A. Fort Stockton ISD.

7 Q. So he's been in the Fort Stockton community most of
8 his life.

9 A. Yes.

10 Q. And has he ever been in any legal trouble?

11 A. No.

12 Q. Okay. He does suffer from some substantial medical
13 conditions; is that right?

14 A. Yes, he does.

15 Q. Would you describe those for me, please?

16 A. Well, physical conditions, he has a bone disorder
17 that's called MHE, multiple hereditary exostosis. This
18 causes extra bone growths. His arms are bowed. He has
19 lots of orthopedic type issues with that. He also has
20 several mental disorders. He was first diagnosed with
21 ADHD. Later, it was autism spectrum Asperger's.

22 Q. And that -- from your understanding, that basically
23 means that he's antisocial, right?

24 A. Yeah. He's very antisocial.

25 Q. Okay. And has he been -- has he been found to be

1 disabled by the state of Texas?

2 A. Yes.

3 Q. Okay. So he doesn't work; is that correct?

4 A. He does not. He receives SSI.

5 Q. Okay. Did he graduate from high school?

6 A. He did.

7 Q. And did he attend college at all?

8 A. He took some classes at Midland College Extension,
9 the WRTTC in Fort Stockton.

10 Q. Okay. Your house -- you spoke with some federal
11 agents and your house was searched in January of this
12 year; is that right?

13 A. That is correct.

14 Q. And after that, you and Thomas changed your living
15 arrangement a little bit; is that right?

16 A. That's right.

17 Q. Could you explain that to me?

18 A. Yeah. So after the raid, we went and saw an attorney
19 and discussed it. He advised us that we needed to move
20 out of the house, which we did, for a while. It was also
21 discussed that we needed to have Thomas move out of our
22 house. We were very concerned about his mental condition.
23 We were concerned that he was very depressed, and, you
24 know, we just -- it was decided that we needed to remove
25 him under a mental warrant.

1 Q. And you sort of thought that that would be good for
2 him and for you to get some space and let him have some
3 level of independence; is that right?

4 A. Yes, sir. We thought he would, you know, get some
5 help there to -- at the mental hospital, Oceans in Odessa
6 or Midland. And so, he -- he spent about a week there,
7 and then, we moved him to my mother's house in Taylor
8 County. And we purchased a house in Merkel, and he moved
9 into that house and was actually doing very well there.

10 Q. Okay. You saw significant improvement in his mental
11 condition and his well -- and his existence.

12 A. Yes, sir, we did.

13 Q. Was he able to support himself and take care -- I
14 mean, I don't -- support himself, obviously he's receiving
15 SSI. But was he able to basically take care of himself in
16 that environment?

17 A. He was.

18 Q. And have you -- I know that you mentioned at some
19 point that he -- there were some verbal threats between
20 him and you -- or him and your family prior to that move.

21 Did you largely reconcile between January and
22 September?

23 A. Absolutely.

24 Q. Okay. Do you feel that he's a danger at all to you
25 or your wife?

1 A. No. I do not.

2 Q. Do you feel he's a danger to anyone else in the
3 community at this time?

4 A. No. No, sir. I do not.

5 Q. Okay. When you set him up in the -- since you've set
6 him up in the new house in Merkel, have you had any
7 occasion to believe that he's still viewing child
8 pornography?

9 A. No, sir.

10 Q. Okay. And you've told me that in preparation for
11 today, you've taken some steps to ensure that he won't
12 have any access to electronic devices or the internet if
13 he were to be granted a bond; is that correct?

14 A. That is correct.

15 Q. What are those steps?

16 A. So the first thing we did is, we disconnected the
17 modem; so there's no Wi-Fi at all. We removed any devices
18 that was capable of accessing the internet. He had a
19 little laptop, we took that. We took his smartphone. Any
20 other devices, we took them all out of the home.

21 Q. Have you done that -- are we talking about -- when
22 you say the home, are we talking about the house in Merkel
23 or your house in Fort Stockton?

24 A. The one in Merkel.

25 Q. Okay. Would you be willing to do something similar

1 in Fort Stockton?

2 A. We would.

3 Q. And would you -- would you be willing to allow him to
4 live at your house in Fort Stockton if the Court required
5 that as opposed to the Merkel house?

6 A. Yes. If that's required.

7 Q. And you're aware that there are some very specific
8 conditions in this kind of case about him living in a
9 location that is near places where children gather; is
10 that right?

11 A. Yes.

12 Q. And I don't -- you and I haven't discussed this
13 before, but I'm just curious.

14 Would you be willing -- if neither of those
15 locations are found to be acceptable, would you be willing
16 to take steps to identify an apartment or perhaps a mobile
17 home or some -- park where he could live that would be
18 suitable under the law?

19 A. Yes, sir.

20 Q. Okay.

21 A. I would.

22 Q. Do you think there's any danger that he wouldn't come
23 to the Court when required?

24 A. No.

25 Q. And would you take steps as his father in concert

1 with your wife to -- per -- to make sure that he came to
2 court?

3 A. Yes, absolutely.

4 Q. And you and your wife have discussed this
5 extensively, I'm sure; is that right?

6 A. Yes, sir.

7 Q. And is she in agreement with everything that you've
8 told me today?

9 A. She is.

10 Q. Pass the witness.

11 THE COURT: Mr. Cannizzaro.

12 MR. CANNIZZARO: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MR. CANNIZZARO:

15 Q. Good morning, Mr. Perkins. Can you hear me okay?

16 A. Yes.

17 Q. Okay. And I'm sorry, your father, not Jr. Perkins.
18 Mr. Perkins, Sr.

19 A. Yes.

20 Q. Can you hear me okay?

21 A. Yes, I can.

22 Q. Okay. Thank you. If you cannot hear me, please let
23 me know as I know we're -- I'm in a remote location. I
24 want to make sure you're able to hear me.

25 If I heard you correctly, you said that you are

1 willing to have your son live with you if the Judge
2 orders; is that what you said?

3 A. Yes, sir. Yes.

4 Q. Okay. Now, I had a chance to review the Pretrial
5 report, and it looks like what you and your wife said in
6 the Pretrial report is that you were not willing to let
7 him live with you. So what has changed?

8 A. Well, my wife and I have discussed it extensively,
9 and we've decided that it would be okay just based on the
10 progress that he's made. So we've changed our mind on
11 that.

12 Q. Okay. But you recent -- I mean, it sounds to me like
13 you recently changed your mind like when this pretrial
14 report was written, you said, nope. I'll agree to be a
15 third-party custodian, but he's not living with me. And
16 now, today, you're telling the judge, he can live with me.
17 Is that true?

18 A. That's correct.

19 Q. Okay. And there was something in here that I just
20 wanted to confirm. The house that you had in Merkel, is
21 it true that it's close to, it looks like, half a mile
22 from a school, seven-tenths of a mile from a middle
23 school? Is it in close proximity to schools where
24 children congregate?

25 A. I believe it's eight blocks from a elementary school.

1 But you have to understand, Merkel's a very small town.

2 So anything --

3 Q. Yes, sir --

4 A. -- in Merkel's going to be close to a school.

5 Q. Gotcha. Okay. And I'm not disputing that it's a
6 small town. I've never been there obviously, but I just
7 wanted to confirm with the report said that it's in close
8 proximity. I guess the whole town is very small. So it's
9 in close proximity to those locations.

10 The other question I wanted to ask you, I know
11 that you told Mr. O'Neal that your son has a mild form of
12 autism. Was he also diagnosed with schizophrenia to your
13 knowledge.

14 A. He was.

15 Q. Okay. And there's some indication in the report that
16 your son is reluctant to take the medication that was
17 prescribed to him.

18 Can you shed some light into that? Does he take
19 medication? Is he prescribed medication?

20 A. He is not prescribed any medication right now. He
21 hasn't gone to a doctor in a while for that.

22 Q. And there was also --

23 THE DEFENDANT: I only had schizophrenia for
24 insurance purposes only --

25 MR. O'NEAL: Your Honor, I'm going to pause real

1 quick.

2 THE DEFENDANT: I had (indiscernible) --

3 THE COURT: Mr. Perkins, you're not testifying
4 presently, and so, you are not to make any remarks.

5 Q. (BY MR. CANNIZZARO) The other question I had for you,
6 Mr. Perkins, Sr., was, you said there are conditions that
7 you could do to ensure that there was no internet access
8 in your house. But you know pretty much for a fact that
9 your son wants to have internet access, right? He's
10 expressed to you that he wants that access to either the
11 internet, his YouTube channels, something of that nature.
12 Is that true?

13 A. He has.

14 Q. And that, of course, even though you are his dad, you
15 know, there's no telling what he might be able to have
16 access to without you knowing; isn't that true?

17 A. No, sir. I don't -- I don't believe he'd be able to
18 if I disabled the modem and took his devices, which I
19 have.

20 Q. Okay. And it's true that you had other -- I think
21 when we were talking with Agent Ferg, there were passwords
22 only he had access to with some of his devices before they
23 were -- is that true?

24 A. That's true.

25 Q. Okay. I don't have any other questions for you, Mr.

1 Perkins, Sr. Thank you very much.

2 THE COURT: Mr. O'Neal?

3 RE-DIRECT EXAMINATION

4 BY MR. O'NEAL:

5 Q. Mr. Perkins, could you just confirm your address for
6 us in Fort Stockton?

7 A. 404 South Seals.

8 Q. Nothing further, your Honor.

9 THE COURT: Mr. Perkins -- Mr. John Perkins, your
10 testimony is your son lived with you and your wife in Fort
11 Stockton until January of this year? Is that correct?

12 THE WITNESS: That's correct.

13 THE COURT: And then, when did you buy the house
14 in Merkel?

15 THE WITNESS: We bought it in -- we closed on it
16 in May.

17 THE COURT: And then, your son has been living at
18 the house in Merkel since May; is that correct?

19 THE WITNESS: Since May.

20 THE COURT: And how far is Fort Stockton from
21 Merkel?

22 THE WITNESS: It's about 200 miles.

23 THE COURT: And how often do you visit with your
24 son?

25 THE WITNESS: We go there every two to three

1 weeks.

2 THE COURT: And do you like stay for a weekend or
3 stay for a day? How long -- what is the typical visit
4 like?

5 THE WITNESS: It's usually a three-day weekend.

6 THE COURT: And then, would you stay -- where
7 would you stay? Would you stay at that house in Merkel?

8 THE WITNESS: We would.

9 THE COURT: Okay. And then, is it your testimony
10 that you would allow your son to live with you in Fort
11 Stockton?

12 THE WITNESS: We would.

13 THE COURT: And then, if that house, for whatever
14 reason, is too close to a school or too close to where
15 children gather -- and I'm not saying that it is or is
16 not. I don't know -- you would find -- you would make
17 attempts to find another suitable address? Is that
18 correct?

19 THE WITNESS: That's correct.

20 THE COURT: Thank you. I don't have anything
21 else. Thank you, sir. You may step down.

22 MR. O'NEAL: Defense rests, your Honor. I have
23 brief argument for the Court.

24 THE COURT: Yes. You may.

25 MR. O'NEAL: Your Honor, this case kind of

1 presents a very classical scenario with the consumption of
2 child pornography where a person -- basically, I mean,
3 without making any admissions on behalf of Mr. Perkins,
4 but taking the government's evidence for the probable
5 cause that it shows, what happens with child pornography
6 and the reason it's become so prevalent on the internet,
7 searchers refer to as the triple A engine, accessibility,
8 affordability and anonymity, is what drives people so much
9 now to consume it more what the internet than it was
10 previously available.

11 Here, we can see that once Mr. Perkins lost his
12 anonymity, once, you know, he realized that law
13 enforcement was monitoring him, there's no evidence to
14 suggest that he has consumed child pornography in any way
15 since then or had any contact with a child or attempted to
16 have any contact with a child that would create a danger
17 to the community.

18 Further, his access -- his father has testified
19 that he will ensure that there is no access here if the
20 Court sets those conditions.

21 Returning to the classic question under 3142, the
22 Court is faced with will he come to court and will he be a
23 danger to the community? He's going to come to court.
24 He's already shown the Court that he will do that
25 voluntarily presenting himself here last Tuesday and --

1 THE COURT: You could stop on that one.

2 MR. O'NEAL: Yes, sir.

3 THE COURT: I don't find -- I mean, I don't find
4 that there's -- that Mr. Perkins will be a risk of flight.

5 MR. O'NEAL: Yes, sir.

6 Moving to the danger to the community, I think
7 the things that would trouble the Court most are the
8 statements in their presentence investigation report,
9 specifically that the defendant also said if a 12 or a
10 13-year-old girl came on to him, he would not be able to
11 stop himself.

12 My cross-examination of Agent Ferg was meant to
13 just further clarify that the question posed to him by a
14 female polygrapher was, if she were 13 years olds and hit
15 on him, would he be able to resist that if they were in a
16 sufficiently private location. The Court can tailor
17 conditions to ensure that that sort of scenario never
18 exists.

19 Mr. Perkins largely is homebound as it is. He's
20 disabled and unable to work. The Court could require home
21 confinement, which would not present any risk of that
22 happening. Further, the report notes that there was a
23 previous incident where he did touch a 12-year-old girl
24 during a horse-playing event -- a horse-playing scenario
25 at a church event, which is why I further elicited from

1 Agent Ferg that he did not at the time consider that to be
2 sexual contact. And as I've mentioned, we can make sure
3 that he doesn't have any contact with minors.

4 So I think that the defense has met the burden to
5 persuade here. Certainly we've rebutted the presumption
6 and met the burden to persuade that there's not a risk of
7 danger to the community, and we can ensure that he doesn't
8 access these materials through narrowly tailored
9 conditions by the Court.

10 THE COURT: Address for me the -- when there were
11 61 devices taken from -- I guess it would be the home when
12 the search was conducted in January -- ten of them had
13 been searched, seven of them have shown child pornography
14 on them. There have been -- there were 100,000 files
15 found on these seven devices, and 69,000 of these were
16 unique files of child pornography.

17 Tell me why I don't -- Mr. Perkins would not have
18 a -- he's almost -- I mean, I can't imagine 69,000 files.
19 That's a -- those are a lot of files, and it shows that
20 he's been doing this not only a lot but for a long time.

21 MR. O'NEAL: I agree with the Court. And I think
22 the evidence can see that the -- strength of the evidence
23 factor for the government here is rather strong and that
24 the case is quite grave.

25 What I will urge to the Court is that that level

1 of volume, to what the Court indicated, speaks of
2 addictive type of behavior. And I will suggest to the
3 Court that I think that that means that pretrial -- I
4 think that argues in favor of pretrial detention here
5 because we have some evidence that since the search in
6 September that led to the discovery of this, Mr. Perkins
7 has improved -- his mental well-being has improved and his
8 behavior in this respect, there's no evidence to indicate
9 that it's continued. The evidence shows that it's
10 stopped.

11 If he's released on pretrial detention, we can be
12 certain about that sort of thing because the Pretrial
13 Services officers will monitor him very closely, and I
14 think that that will augur, if he complies with the
15 condition, strongly in his favor at sentencing to
16 demonstrate to the district court judge, assuming we get
17 there, that he -- that this was addictive behavior and
18 that he has the ability to stop this behavior.

19 THE COURT: You can continue if you'd like.

20 MR. O'NEAL: That's all I have, your Honor.

21 THE COURT: Okay. Mr. Cannizzaro, would you like
22 to weigh in on this?

23 MR. CANNIZZARO: Yes, your Honor.

24 The government still feels that this defendant
25 should be detained. Mr. Perkins, Sr. is placed in a very

1 difficult position. Basically they've kicked their son
2 out of their own home prior to him ever being indicted;
3 and the reason they did so is they were afraid of him.
4 And he says he's not afraid of him now. In the Pretrial
5 Services report, he said, or at least his wife said, that
6 they are afraid of him.

7 In addition, speaking to the defendant's
8 potential danger to the community, there is mention in
9 that report from his own mother saying that when he gets
10 frustrated, he gets to be violent. And we've kind of seen
11 a very teeny, tiny sliver of the defendant and how he got
12 frustrated even in today's hearing.

13 The fact of the matter is that his own parents
14 are being placed in a very difficult position. We feel
15 that he is a danger to the community. His parents have
16 expressed that throughout this time. They know him best.
17 The fact that he is now under indictment and that he is
18 now facing criminal charges with minimum mandatory
19 penalties only further buttresses the argument that he is
20 a risk and he is a danger not only based on the offense,
21 but based on what we know about him.

22 And for all those reasons, your Honor, we're
23 asking for you to detain him and we stand by our original
24 position. Thank you, Judge.

25 THE COURT: Thank you.

1 And I would note that Count 2 of this -- Count 2
2 of this indictment, which is distribution of child
3 pornography, carries with it a minimum sentence of five
4 years, up to a maximum of 20 years. This is clearly a
5 serious crime. I know the parents have been -- this is a
6 difficult position for the parents because -- and they've
7 done everything -- I think they've done everything they
8 can to help their son.

9 Looks to me like they -- when he was living with
10 them through January, he was -- the parents had some
11 difficulties with a child who is autism and ADHD, which is
12 -- and which puts them in a difficult position. Then when
13 this was -- the search was executed and the computers were
14 taken, they made attempts to move him to Merkel, and they
15 bought a house for him in Merkel. And apparently he's
16 been living there with some degree of success.

17 But I can't get around the seriousness of this
18 case because not only has this defendant made references
19 to possibly abusing a 12 or 13-year-old child in the flesh
20 but he's had -- the low number of the evidence that I have
21 before me is that there were 69,000 files containing child
22 pornography what were located on only seven of the devices
23 that were confiscated. That's the low end -- that will be
24 the low end number.

25 Under the guidelines, that will be a serious

1 upward adjustment and I don't think that -- I'm not
2 willing to put Mr. Perkins' parents through obtaining a
3 new house for him or new living arrangements if -- this is
4 Mr. Perkins' case, not theirs. And therefore, I find
5 under these conditions that there are no conditions or
6 combination of conditions to assure the safety of the
7 community in this case. And Mr. Perkins is ordered
8 detained.

9 The former -- the former order of release is
10 hereby rescinded and then -- and I would note for the
11 record that Judge Parker, at the time he set conditions in
12 this case, did not have the benefit of the information
13 that I have before me.

14 (Proceedings conclude at 11:18 a.m.)
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REPORTER'S CERTIFICATE

I, LILY I. REZNIK, DO HEREBY CERTIFY THAT THE FOREGOING
WAS TRANSCRIBED FROM AN ELECTRONIC RECORDING MADE AT THE
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PROCEEDINGS IN THE ABOVE-ENTITLED MATTER, AND THAT THE
TRANSCRIPT FEES AND FORMAT COMPLY WITH THOSE PRESCRIBED BY
THE COURT AND JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/Lily I. ReznikOctober 16, 2020

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